

## REMARKS

In view of the herein contained remarks, Applicants respectfully request reconsideration and withdrawal of each of the outstanding rejections set forth in the above-mentioned Official Action, together with an indication of the allowability of all of the claims pending in the present application.

Applicants note with appreciation the Examiner's consideration of the documents cited in the Information Disclosure Statement filed in the present application by the return of the initialed and signed copy of the PTO-1449 Form accompanying the Information Disclosure Statement filed herein.

Applicants further note with appreciation the Examiner's acknowledgment of Applicants claim for foreign priority under 35 U.S.C. § 119 and the filing of the certified copies of the priority documents.

The Examiner has provisionally rejected claims 7, 14, 21, and 28 under the judicially created doctrine of obviousness-type double patenting. The Examiner has rejected claims 1-3, 5, 6, 8-10, 12, 13, 15-17, 19, 20, 22-24, 26, 27, and 29-31 under 35 U.S.C. § 102(b) as being anticipated by the online document entitled Dragon Quest IV (NES) Manual by Don Gonzales posted July 4, 2003 (hereinafter referred to as GONZALES). The Examiner has rejected claims 4, 11, 18, and 25 under 35 U.S.C. § 103(a) as being unpatentable over GONZALES in view of U.S. Patent No. 6,475,084 to TANIBUCHI et al. The Examiner has rejected claims 7, 14, 21, and 28 under 35 U.S.C. § 103(a) as being unpatentable over GONZALES

in view of U.S. Patent No. 6,347,994 to YOSHIKAWA et al. The Examiner has rejected claim 32 under 35 U.S.C. § 103(a) as being unpatentable over GONZALES in view of U.S. Patent No. 6,106,399 to BAKER et al. Applicants respectfully traverse these rejections and assert that they are not appropriate.

Regarding the provisional obviousness-type double patenting rejection of claims 7, 14, 21, and 28, Applicants note that obviousness-type double patenting requires that the claims are at least not patentably distinct. See MPEP 804(II)(B)(1). Applicants respectfully assert that these claims are patentably distinct from one another for the reasons noted below.

Applicants note that claims 7, 14, 21, and 28 are directed to displaying action orders. This feature is described in the specification on page 18 and set forth in the drawings in step s4 of figure 2. In contrast, it appears that the Examiner is addressing the displaying of a sequence of action feature in the 09/964,801 patent application. This is described, for example, in the 09/964,801 patent application specification at page 25 and steps s4 and s5 of figure 2. The present invention (i.e. the independent claims) is directed to the substitution feature and on the contrary, the 09/964,801 patent application invention is specifically directed to the calculation, comparison and determination of the sequence of action with respect to a number of turns. Thus, the displaying of action orders of the present application is patentably distinct from the displaying of a sequence of actions of 09/964,801. The differences between the claims being further amplified by the differences of the independent claims (which are

substantially different as noted above) from which each of these claims depend. In other words, while these features have some similarities, but it is respectfully asserted that any similarities do not rise to the level of double patenting in view of the GONZALES document. Further, in addition to the patentably distinct recitations of the two claims, GONZALES is not prior art (see discussion below). Furthermore, the combination of the GONZALES and 09/964,801 application would not be obvious to one of ordinary skill in that art. In other words, there is no motivation to modify the 09/964,801 application in the manner that the Examiner has set forth.

With respect to the 35 U.S.C. § 102(b) of claims 1-3, 5, 6, 8-10, 12, 13, 15-17, 19, 20, 22-24, 26, 27, and 29-31 over Dragon Quest IV as described by GONZALES, Applicants respectfully assert that this document (GONZALES) is not prior and even if it were prior art, it does not disclose each and every claimed feature of the present invention.

The GONZALES document is being applied under 35 U.S.C. § 102(b). Applicants respectfully assert that the Examiner has failed to provide any factual basis that GONZALES is prior art under any section of 35 U.S.C. § 102 or 35 U.S.C. § 103 for the present application. Thus, Applicants respectfully assert that a rejection of the claims in the present application based on GONZALES is improper.

The Manual of Patent Examining Procedure (MPEP) sets forth what dates are used for prior art publications such as a downloaded document. In particular MPEP section 2128 states in part:

**Date of Availability**

Prior art disclosures on the Internet or on an online database are considered to be publicly available as of the date the item was publicly posted. If the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b), although it may be relied upon to provide evidence regarding the state of the art.

In other words, MPEP 2128 provides that a document is prior art as of the date it is available.

GONZALES has a posting date of July 4, 2003 and this would be equivalent to the availability date. Thus, the posting date of July 4, 2003 is the date at which GONZALES should be considered to become prior art.

The present application was filed in the United States on September 28, 2001. Thus, the United States filing date of the present application was more than one year before the availability date of July 4, 2003 of GONZALES.

Because GONZALES availability date is July 4, 2003, it is not properly prior art under any section of 35 U.S.C. § 102 and § 103 for the present application. Applicants respectfully assert that, for this reason alone, any rejection relying on this reference is improper. Thus, Applicants respectfully request that the Examiner's rejection of claims 1-3, 5, 6, 8-10, 12, 13, 15-17, 19, 20, 22-24, 26, 27, and 29-31 based on GONZALES is not proper.

Even if the GONZALES' reference were prior art, it does not anticipate each and every feature of claims 1-3, 5, 6, 8-10, 12, 13, 15-17, 19, 20, 22-24, 26, 27, and 29-31 as noted below.

The 1990 release of Dragon Quest IV includes game programming for selecting an action character from multiple action characters that can act at the present moment (characters on a wagon) and then requires selecting another character from multiple standby characters (characters outside the wagon) at the same time. At this time the two selected characters are switched. In other words the action character moves outside the wagon and the standby character moves into the wagon. Thus, Dragon Quest IV requires a first step of selecting an action character to be switched into the wagon and a second step of selecting a character to be switched out of the wagon. This is a two-step process that does not take place during a command input.

On the contrary, in the present invention, switching a member is one of the options that is provided for characters that are waiting for a command input. The switching member command involves a single selection that can be input in a single step to switch a member and further includes a quick member switch that is enabled even during battle. Dragon Quest IV, and hence GONZALES, does not disclose the feature of displaying a list of standby characters when a player character in battle is awaiting an input command that can be directly selected by a single operation by the player and substituted as recited by independent claims 1, 8, 15, 22, 29, 30, and 31.

With respect to the claim 32 rejection under 35 U.S.C. § 103(a) over GONZALES in view of U.S. Patent No. 6,106,399 to BAKER et al., Applicants respectfully assert that GONZALES is not prior for all of the reasons noted above and even if it were prior art then it does not disclose each and every claimed feature of the present invention as noted above. That is, Dragon Quest IV, and hence GONZALES, does not disclose the feature of displaying a list of standby characters when a player character in battle is awaiting an input command that can be directly selected by a single operation by the player and substituted as recited by independent claim 32.

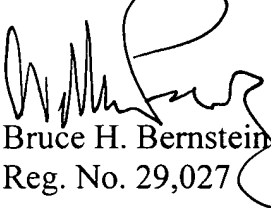
Moreover, there is no suggestion or disclosure in GONZALES or BAKER et al., separately or in any proper combination that render obvious the features of the present claimed invention.

With regard to dependent claims 2-7, 9-14, 16-21, and 23-28, Applicants asserts that they are allowable on their own merit and at least because they depend on one of independent claims 1, 8, 15, 22, and 29-31, which Applicants submit have been shown to be allowable.

Applicants have made a sincere effort to place the present application in condition for allowance and believe that they have now done so. Applicants have pointed out the specific language of Applicants' claims that define over the references of record and respectfully request an indication to such effect, in due course.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
Takatsugu NAKAZAWA et al.

  
Bruce H. Bernstein  
Reg. No. 29,027

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GREENBLUM & BERNSTEIN, P.L.C.  
1941 Roland Clarke Place  
Reston, VA 20191  
(703) 716-1191